IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13443 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JUNAGADH MUNICIPALITY - Petitioner(s)
Versus
DIST COLLECTOR JUNAGHADH & 4 - Respondent(s)

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Appearance :

MR PREMAL R JOSHI for Petitioner(s) : 1,
MR LR PUJARI AGP for Respondent(s) : 1 - 4.
MR DP VORA for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 23/02/2007

ORAL JUDGMENT

1. Mr.Premal Joshi, learned counsel for the petitioner, Mr.L.R. Pujari, learned counsel for the respondent Nos.1

to 4 – State and Mr.D.P. Vora, learned counsel for the respondent No.5.

2. By the present petition, Junagadh Municipality, now Corporation, seeks to challenge order dtd.2/11/1993 passed by the Collector, Junagadh in Case No.Land-2-C-3279/93, whereunder an area admeasuring 190 sq.mtrs of Survey No.406/2 of Junagadh Township, has been allotted in favour of Mahila Mandal, Junagadh for developing Working Women Hostel.

3. Mr.Joshi, learned counsel for the petitioner submits that the Secretary to the Government of Saurashtra, Revenue Department issued a Notification No.RD/LSG/10-2(28) on 29/2/1966, wherein all the lands, except the land well described in the said notification, were allowed to vest in the Municipality. His submission is that Survey No.406/2 was not retained by the Government and was also allowed to vest in favour of the Municipality. His submission is that if Survey No.406/2 vested in the Municipality, then neither the Collector nor the State Government, had any right to allot the land to third party.

4. Notices were issued to the State Government, but for the reasons best known to the State Government, they did not file any reply to the petition thinking probably that if

they were to file a reply, they would be exposed to the judicial wrath of this court and their illegal action would start floating on the surface.

5. I pointedly asked Mr.L.R. Pujari, learned Assistant Government Pleader to tell me that how the State says that Survey No.406/2 belonged / belongs to the State, Mr.Pujari, submits that there is nothing on the record to show or suggest that Survey No.406/2 was retained by the Government. However, he submits that for allotment of the land, the Collector has relied upon Village Form No.7/12.

6. Mr.Vora, learned counsel for the respondent No.5 submits that Mahila Mandal, Junagadh wanted some land and under a *bonafide* belief that the land belongs to the Government, they made an application to the Government and if the Collector, in his turn, had allotted the land, no wrong can be found in the action of the Collector.

7. Under the provisions of Bombay Provincial Municipal Corporations Act, property belonging to the Municipality / Municipal Corporation can be dealt with by the Municipality or Municipal Corporation for leasing out or selling out the property. Such Municipality or Municipal

Corporation has to pass a resolution and in accordance with such a resolution, rights are to be conferred upon such claimants. In a given case, where the properties are tobe leased out for more than 10 years or is to be sold for a consideration beyond Rs.1 Lac, the Collector has powers to suspend the execution of the order and keep the order in abeyance permanently. The entire law does not confer any right upon the Collector or the State Government to dispose of the property belonging to the Municipality or Municipal Corporation. A Municipality or Municipal Corporation is a body corporate, it can sue and be-sued in its own name, it can hold the property and if it can hold the property, and, it has right of dispossession.

8. In the present case, The Collector, less realising, but presuming that the property belong to the State, made an order of allotment and compelled the respondent No.5 to deposit the money. If the State or the Collector had no authority to deal with the land, then, the Collector could not pass order on 2/11/1993, specially without issuing any notice to the Municipality or without taking the Municipality in confidence.

9. So far as the reliance placed by the Collector upon Village Form No.7/12 for allotment of land is concerned, in the

opinion of this Court, the Collector was not entitled to place reliance upon the said Form. It is expected of the Collector to know law that the properties within Municipal limit, unless reserved by the State Government, would vest in the Municipality or Municipal Corporation.

10. The order dtd.2/11/1993 is patently bad and illegal, it cannot be allowed to stand. It deserves to and is accordingly quashed. The petition is allowed. Rule is made absolute. The petitioner would be entitled to a sum of Rs.10,000/- (Rupees Ten Thousand only) as costs against the respondents – Government, because, the petitioner was required to approach this Court in view of the illegal act of the State Government through its Collector. The State Government is hereby directed to refund the money which the respondent No.5 has paid to the State Government with interest at the rate of 12% per annum from the date of its deposit till its payment. It is hereby further directed that the State Government shall pay the costs to the petitioner and refund the money with interest to the respondent No.5 within a period of three months from today and if the same is not done, then, it would be taken tobe breach of this order and the petitioner and/or the respondent No.5 would be entitled

to make an application in this writ application for drawing contempt proceedings against the concerned officers of the State Government.

(R.S. GARG, J.)

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